

Members present: Vern Gardner, Craig Wilson, Brian Boyle, Brett Costa

Members absent: Norm Leon

Staff: Heather Ross, Code Enforcement Officer

The meeting was called to order at 7:05 p.m.

Pledge to the Flag

Mr. Gardner advised the applicant there are only four members present, requiring all four like votes for the application to be approved. The applicants agreed to continue.

Mr. Wilson noted Title 16.1.5.2.F.4.a. authorizes the Board of Appeals to hear the following Miscellaneous Variation appeals.

Item 1: Jennifer Mead / Page Mead – 20 Gerrish Island Lane, Map 44 Lot 47, R-KPV

Jennifer Mead / Page Mead requesting a Miscellaneous Variation to the terms of Title 16 Table 16.9 & Title 16 Section 3.2.3.D in order to screen a 10' x 18' porch.

Mr. Mead noted the screened in porch is 10'x13', not 10'x18'. Mr. Wilson noted the application states 12'8". Mr. Mead explained the porch setback from the road is in compliance, at ±43 feet where 40 feet is required. There was no public comment.

The CEO provided:

1. This is a conforming lot with a nonconforming structure located in the Residential-Kittery Point Village zone.
2. Ms. Mead is proposing to construct a 10'x13' addition to the house.
3. Table 16.9 requires a minimum 50 foot setback from wetlands greater than 501 square feet up to an acre in size. Ms. Mead's house is located 40 feet from the wetland. The proposed addition would also be located 40 feet from the wetland though no closer than the existing house.
4. Title 16.3.2.3.D requires a minimum 40-foot front line property setback. Ms. Mead's house is located 24 feet 6 inches from the front property line. The proposed addition would be located 32 feet from the front property line, no closer to the front property line than the house currently sits.

Mr. Costa stated the addition is no closer than what exists. Mr. Wilson noted the application states the distance to the wetland is 39 feet, but the CEO stated 40 feet; on the building permit application it states deck, screened porch and enclosed. The CEO explained the 40 feet is the accurate measurement. The use of 'addition' includes all proposed construction for the size submitted, including a deck, screened porch and enclosed porch. Mr. Wilson concurred the proposal is no closer to the wetlands or front property line than the existing structure. Mr. Gardner asked if the pond was man-made. Mr. Mead stated it is spring fed with no outlet and existed when the property was purchased.

Mr. Costa moved to grant to Jennifer and Page Mead of 20 Gerrish Island Lane, Map 44 Lot 47, in the R-KPV Zone, a Miscellaneous Variation to the terms of Title 16 Table 16.9 & Title 16 Section 3.2.3.D in order to construct a 10' x 13' addition.

Mr. Boyle seconded

Motion carried by all members present

Findings of Fact

1. Jennifer and Page Mead requesting a Miscellaneous Variation to the terms of Title 16 Table 16.9 & Title 16 Section 3.2.3.D in order to screen a 10' x 13' addition.
2. This is a conforming lot with a nonconforming structure located in the Residential-Kittery Point Village zone.

3. Table 16.9 requires a minimum 50 foot setback from wetlands greater than 501 square feet up to an acre in size. Ms. Mead's house is located 40 feet from the wetland. The proposed addition would also be located 40 feet from the wetland though no closer than the existing house.
 4. Title 16.3.2.3.D requires a minimum 40-foot front line property setback. Ms. Mead's house is located 24 feet 6 inches from the front property line. The proposed addition would be located 32 feet from the front property line, less nonconforming and no closer to the front property line than the house currently sits.
 5. Mr. Mead stated the existing pond is approximately one-third acre in size and spring fed.
- Mr. Boyle moved to approve the Findings of Fact
Mr. Costa seconded
Motion carried by all members present

Conclusion

Requirements under Title 16.6.6 *Basis for Decision* have been substantially met, and the Board has the authority to grant a variation under 16.7.3.5.5, *Nonconforming Structure Repair and/or Expansion*, where the structure is no more nonconforming.

Mr. Costa moved to approve the Conclusion

Mr. Boyle seconded

Motion carried by all members present

Item 2: C/o Christopher Baudo – 112 Manson Avenue, Map 16 Lot 78, R-V

Christopher Baudo requesting Miscellaneous Variation to the terms of Title 16 Section 3.2.66 in order to reconstruct fire damaged structure on existing foundation.

Mr. Baudo explained the existing residence has been in its existing condition since April, 2012, and requests to rebuild the structure and demolish adjacent carport, and reconstruct the building to be less nonconforming. When originally built, the structure pre-dated Kittery codes and the foundation is nonconforming. The foundation will remain, with the structure built on the foundation. Upon inspection, the existing deck has been found to be sound.

Deborah Charbonair, Manson Avenue, stated she is in support of this proposed reconstruction. She noted her concern about safety during the construction process. Mr. Baudo stated there will be an excavator to remove the majority of the structure, but the trailer will be located off site. Containers will be located off street. The time period for construction is not expected to exceed three months and the vehicles will be kept on the property as much as possible. There was no further public comment.

The CEO provided:

1. This is a nonconforming lot with a nonconforming structure, located in the Residential-Village zone.
2. The house was severely damaged by fire in April 2012.
3. Mr. Baudo proposes to remove the damaged structure and construct a new house on the existing foundation.
4. Title 16.3.2.6.C requires a minimum 10-foot side property setback. The existing foundation is located approximately 4 feet from the side property line. The proposed reconstruction will be no closer than what currently exists.

Mr. Gardner asked if there are any regulations regarding construction. The CEO stated the noise ordinance limits hours of operation to no later than 9:00 p.m. and no earlier than 7:00 a.m. Dumpsters on the property must meet front setbacks if located longer than 30 days. She believed street parking is allowed in this area, and has no concerns from a code enforcement standpoint.

Ms. Charbonair asked if there could be a temporary order to restrict parking as neighbors park on the opposite side of the street and additional construction vehicles will make passage difficult, with a four-way intersection nearby. She noted a container was in the street when a neighboring home was being refurbished. Mr. Gardner stated in this case, containers will not be permitted to be in the street. Mr. Baudo assured the Board containers will remain on-site. Discussion followed, noting street parking is a police issue, and cannot be regulated by the Board of Appeals.

Mr. Costa noted the new driveway on the left side, where the existing driveway is on the right side. The CEO noted driveway entrance permits are handled by the Public Works Department, with the Board of Appeals addressing the structure only.

Mr. Costa moved to grant to Christopher Baudo, 112 Manson Avenue, Map 16 Lot 78, R-V zone, a Miscellaneous Variation to the terms of Title 16 Section 3.2.5.D in order to reconstruct a fire damaged structure on existing foundation.

Mr. Boyle seconded

Motion carried by all members present

Findings of Fact

1. Christopher Baudo appeared before the Board requesting reconstruction of a fire damaged structure at 112 Manson Avenue, Map 16, Lot 78 in the Residential-Village Zone.
2. This is a nonconforming lot with a nonconforming structure, located in the Residential-Village zone.
3. The house was severely damaged by fire in April 2012.
4. The structure had a front porch and a carport which will be demolished. The first floor deck is structurally sound and will remain.
5. The structure was built in the 1940's prior to Code regulations.
6. Title 16.3.2.6.C requires a minimum 10-foot side property setback. The existing foundation is located approximately 4 feet from the side property line. The proposed reconstruction will be no closer than what currently exists.
7. Deborah Charbonair raised concerns over traffic and parking safety during construction, with parking on both sides of the street, and an intersection.
8. Construction will take approximately 3 months. Applicant stated all debris containers will remain on-site and not in the street.

Mr. Boyle moved to accept the Findings

Mr. Costa seconded

Motion carried by all members present

Conclusion

The application is in substantial compliance with applicable requirement in Title 16.6.6 *Basis for Decision*, and the Board has the authority to grant this request under 16.7.3.5.5, *Nonconforming Structure Repair and/or Expansion*, where the proposed structure is no more nonconforming than the previously existing structure.

Mr. Boyle moved to accept the Conclusion

Mr. Costa seconded

Motion carried by all members present

Item 3: C/o Christopher Baudo – 112 Manson Avenue, Map 16 Lot 78, R-V

Christopher Baudo requesting Miscellaneous Variation to the terms of Title 16 Section 8.25.2 in order to construct an accessory apartment within reconstruction of existing dwelling.

Mr. Baudo is requesting the approval of an accessory apartment with this structure to aid in the marketing of the property. There was no public comment.

The CEO provided:

1. This is a nonconforming lot with a nonconforming structure, located in the Residential-Village zone.
2. Mr. Baudo proposes to remove the damaged structure and construct a new house on the existing foundation.
3. The Miscellaneous Variation request is to be allowed to construct an accessory dwelling unit within the new structure.
4. Title 16.8.25.2 states: *An Accessory Dwelling unit is allowed in all zoning districts where the use is permitted in Chapter 16.3. The unit must be located in an existing structure with a certificate of occupancy issued more than 5 years prior to the date of the ADU application, on the property where the owner of the property occupies one of the units. The accessory dwelling unit may be attached to, or*

detached from, the primary dwelling unit. No expansion of a building's footprint is allowed to accommodate an accessory dwelling unit.

5. Title 16.8.25.3.A states: *An application for an accessory dwelling unit must be made by the owner of the parcel on which the primary residential unit sits. The completed application and associated fees must be submitted to the Town Planner and Code Enforcement Officer for review.*
6. Title 16.8.25.5 states: *Should an accessory dwelling unit fail to meet the development standards listed in this Article, the accessory dwelling unit may still be allowed if the applicant obtains approval from the Board of Appeals under the provisions of a Miscellaneous Variation Request.*
7. Mr. Baudo does not currently own the property but has a purchase and sale agreement in place. He would like to be able to list the property as a single family home with an accessory dwelling unit, with deed restrictions that one of the units must remain owner occupied.

Mr. Costa asked where the accessory unit will be placed. Mr. Baudo stated on the second floor. The CEO explained there are no volume requirements for ADUs, but they must not be smaller than 400 sf and no larger than 800 sf. Mr. Wilson noted this request does not comply with Title 16.8.25.2, and questioned that if it weren't for the fire, an ADU could be considered. Mr. Boyle questioned the rationale of the section. Mr. Gardner stated he believes the square foot area will exceed 800 sf, and there is no five year occupancy in place. Mr. Wilson stated he believes the rationale behind the five year period was to prevent every home in town from becoming a duplex. In this case, the owner may have met the standards and been granted an ADU, but the extenuating circumstance was the fire. The CEO explained the prior owners did not have insurance to cover the fire damage and Mr. Baudo has a purchase and sale agreement with the owners in order to avoid foreclosure. The CEO explained the intent of the five year provision was to prevent a homeowner from building an addition (i.e. a garage) and then applying for an ADU shortly thereafter, changing the character of the residential areas. Mr. Gardner asked if there are ADUs in the Village zone. The CEO stated there are not, as many of the properties in this area are duplexes and ADUs are only permitted in single family homes. Mr. Baudo stated the foundation is 25'x28', and the proposed size of the ADU is 700 sf.

Mr. Costa stated he could not grant the request because the five year period had not elapsed. Mr. Baudo explained that the prior owner could have met that requirement, and most likely would have received approval, except for the fire. The property is abandoned and in terrible condition, and he is proposing to clean the area up, and the request for an ADU is in keeping with the area where duplexes are common.

Mr. Wilson stated the purpose of ADUs is: *to impose standards that enable homeowners to create accessory dwelling units that are compatible with this Code and do not negatively impact the character of the existing neighborhood or overburden the existing infrastructure.* This request appears to meet the purpose as stated, and conditions requiring off-street parking could be considered if street parking is a problem. He noted that the fire must be considered in this request because if it weren't for the fire the current owners could have met the standards. This is a win-win situation where the neighborhood is cleaned up, the owners can receive remedy, and the town has a return to the tax base. He believes the Board can grant the appeal and not set a precedent, while serving the best interests of the town.

Mr. Boyle noted the property is under a purchase and sale, so it is still owned by the original owners, and believes the reconstruction and proposal will improve the neighborhood.

Deborah Charbonair stated the addition of the driveway as proposed impacts her property negatively. Discussion followed regarding driveways and parking. The CEO stated the code requires 4 parking spaces for the two units. Mr. Baudo suggested they could widen the driveway if two driveways are not permitted.

Mr. Boyle moved to grant to Christopher Baudo, as agent for property located at 112 Manson Avenue, Map 16 Lot 78, in the Residential-Village Zone, a Miscellaneous Variation to the terms of Title 16.8.25.2 in order to construct an accessory apartment within the reconstruction of the existing dwelling, with no new curb cuts on Manson Avenue, with parking spaces be provided on-site for both dwelling units.

Mr. Costa seconded

Motion carried by all members present

Findings of Fact

1. Christopher Baudo, agent, appeared before the Board requesting a Miscellaneous Variation to Title 16.8.25.2 in order to construct an accessory dwelling unit at 112 Manson Avenue, Map 16, Lot 78 in the Residential-Village Zone.
2. There was no public comment during the public hearing segment.
3. This is a nonconforming lot with a nonconforming structure, located in the Residential-Village zone.
4. Title 16.8.25.2 states: *An Accessory Dwelling unit is allowed in all zoning districts where the use is permitted in Chapter 16.3. The unit must be located in an existing structure with a certificate of occupancy issued more than 5 years prior to the date of the ADU application, on the property where the owner of the property occupies one of the units. The accessory dwelling unit may be attached to, or detached from, the primary dwelling unit. No expansion of a building's footprint is allowed to accommodate an accessory dwelling unit.*
5. Title 16.8.25.3.A states: *An application for an accessory dwelling unit must be made by the owner of the parcel on which the primary residential unit sits. The completed application and associated fees must be submitted to the Town Planner and Code Enforcement Officer for review.*
6. Title 16.8.25.5 states: *Should an accessory dwelling unit fail to meet the development standards listed in this Article, the accessory dwelling unit may still be allowed if the applicant obtains approval from the Board of Appeals under the provisions of a Miscellaneous Variation Request.*
7. There was extensive discussion regarding the applicability of Title 16.8.25.2, and it was determined that if it were not for the fire that destroyed the structure, an application could have been made for the allowance of an accessory dwelling unit.
8. Board members concurred the neighborhood would be enhanced, there would be significant public benefit, that the Code does not necessarily take into account extenuating circumstances such as a fire, and granting this Miscellaneous Variation would not set a dangerous precedent in the granting of this Miscellaneous Variation.

Mr. Boyle moved to accept the Findings

Mr. Costa seconded

Motion carried by all members present

Conclusion

The Board has the authority under Title 16.8.25.5 to hear this appeal, and the Board decided in this case that the accessory dwelling unit could be approved given the extenuating circumstances.

Mr. Boyle moved to accept the Conclusion

Mr. Costa seconded

Motion carried by all members present

Mr. Gardner noted this approval is not the issuance of a building permit, and any aggrieved party has 45 days to appeal this decision to Superior Court.

Item 4: Ken Cooperthwait, Mainely Renovations, Inc. – 87 Whipple Road, Map 10 Lot 71, R-U

Ken Cooperthwait requesting Miscellaneous Variation to the terms of Title 16 Section 3.2.5D in order to reconstruct 8.5' x 28' addition on rear of existing house, and construct 9' x 15.5' deck on side of existing house.

Ken Cooperthwait, agent, explained that as part of the home's renovation, the owners wish to add a kitchen to the rear of the building. The existing home is 9 feet from the right of way, with the addition located no closer than 17 feet from the right of way. Because there is a right of way, there are two front setbacks, the ROW and Whipple Road. There was no public comment.

The CEO provided:

1. This is a nonconforming lot with nonconforming structures located in the Residential-Urban zone.
2. Mr. Cooperthwait is proposing to construct an 8 ½' x 28' addition to the rear of the existing house, and a 9'x15 ½' deck on the side of the house.

3. The property is a corner lot and by definition: *Such corner lots, located at the intersection of two streets, are deemed to have a side rather than a front yard between the principal building and the side street. Such side yard may not be less than the front yard requirements of uses located on the side street*, and are therefore required to have a setback of 30 feet.
4. The existing house is 31 feet from Whipple Road with the addition 42 feet from Whipple Road; the house is 9 feet from the ROW and the addition will be 17 feet from the ROW where a 30-foot setback is required. The proposed addition is no closer than what already exists.

Mr. Wilson asked whether this parcel could be divided. The CEO stated this parcel could not meet the minimum lot requirements to allow a division.

Mr. Boyle moved that Ken Cooperthwait, Mainely Renovations, Inc. representing 87 Whipple Road, Map 10 Lot 71, in the Residential-Urban zone be granted a Miscellaneous Variation to the terms of Title 16.3.2.5.D in order to reconstruct an 8.5' x 28' addition on rear of the existing house, and to construct a 9' x 15.5' deck on side of existing house.

Mr. Costa seconded

Motion carried by all members present

Findings of Fact

1. Ken Cooperthwait of Mainely Renovations, Inc. representing 87 Whipple Road, Map 10 Lot 71, requested a Miscellaneous Variation to the terms of Title 16.3.2.5.D in order to reconstruct an 8.5' x 28' addition on rear of the existing house, and to construct a 9' x 15.5' deck on side of existing house.
2. This is a nonconforming lot with nonconforming structures located in the Residential-Urban zone.
3. The existing house is 9 feet from the existing ROW. The proposed structure will be 17 feet from the ROW and 42 feet from Whipple Road. As a corner lot, 30 feet from the ROW and 30 feet from Whipple Road is required. The addition is less nonconforming than the existing structure
4. There was no public comment on the application.

Mr. Boyle moved to accept the Findings

Mr. Costa seconded

Motion carried by all members present

Conclusion

The application is in substantial compliance with applicable requirements in Title 16.6.6 *Basis for Decision*, and the Board has the authority to grant this request under 16.7.3.5.5, *Nonconforming Structure Repair and/or Expansion*, where the proposed structure is no more nonconforming than the existing structure.

Mr. Costa moved to accept the Conclusion

Mr. Boyle seconded

Motion carried by all members present

Minutes: September 24, 2013

Mr. Wilson moved to approve as amended

Mr. Costa seconded

Motion carried by all members present

Mr. Wilson noted that decision letters are required to be completed before the minutes are approved by the Board. He suggested that the minutes and decision letters be emailed to all Board members when complete to determine if there are any glaring problems.

Mr. Gardner moved to adjourn
Mr. Wilson seconded
Motion carried by all members present

The Board of Appeals meeting of October 8, 2013 adjourned at 8:50 p.m.